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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1121

CARL RAY HOOD, a/k/a ROY ELTON HAWKINS, ET AL.,
Petitioners,

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

I.

Two paragraphs in the Solicitor General's memorandum explains succinctly why the Circuit Court must be reversed.

> About a week later, petitioner James Calvin Ward was hired to purchase and sell merchandise on behalf of F & W (TR. 346-349). In late March 1972, petitioner Ward purchased over $8,900 worth of stereo equipment from Morris Electro Products. The equipment was never paid for (TR. 126-127). In April 1972, petitioner Ward purchased $8,000 worth of cooling units from Texas Cooling Distributors. About $7,500 is still owed on this account (Texas Cooling was able to recover three of the units) (TR. 140-143).
>
> Petitioner Mary Base was hired as a secretary for F & W and was paid $2.00 an hour (TR. 26, 333). She worked at F & W for about five weeks, from the time the F & W office opened until it was closed (TR. 106, 335). She answered the telephone and typed purchase orders and at least one sales order (TR. 106-107, 335-337). When she was hired she used the name Mary Doss; while testifying on her own behalf, petitioner Base stated that she had heard that Cash had tried to "bother" another secretary "in and out" of the office, and she felt that Cash could not find out where she lived if she used an alias (TR. 334). (Memo 2-3).

This is the extent of the evidence of any involvement of Ward and Mary Base. Yet, the petitioners, contrary to the Solicitor General's argument does not simply argue that there was insufficient evidence to sustain the

convictions. (See Memorandum p. 5). Petitioners raise the legal issue concerning the scope of conspiracy. To expand the definition to the extent advocated by the Government would place in jeopardy any person employed by another.

What Ward and Base were doing is nothing more than what any employee does on a job. They are penalized for some alleged act of their employer while their employer escapes by making a secret deal with the Government. The company did not pay for merchandise; therefore, the employees must be held liable for conspiracy. This makes absolutely no sense.

An employee cannot be held responsible for the debts of his employer. Nevertheless, the effect of the Circuit Court opinion exposes employees to a risk of criminal prosecution if the company that hired them conspires to defraud creditors. It is totally unfair to impose such an awesome responsibility on these employees. They, the same as creditors, placed reliance on the company that hired them. They, the same as creditors, are entitled to protection rather than prosecution.

II.

Cash and Sumrall, admitted partners in the conspiracy, got off without any time in prison. For his part in the conspiracy, Cash received a sentence of two years

on probation. Sumrall was granted immunity. And Cash clearly lied when he said that he had made no deal with the Government.

In response to this, the Solicitor General argues that "the Government represented that there was no agreement to dismiss the two pending indictments" against Cash (Memorandum p. 4). This is incorrect and contrary to the record. At the hearing on the motion for a new trial, the United States Attorney was absent. The Assistant United States Attorney advised the Court that there was a question that could be clarified only by the testimony of the United States Attorney. The Court, however, refused to require this testimony since the United States Attorney was absent.

What the trial Court did was to make its own judgment that the petitioners had received a "fair trial". This is inconsistent with the opinions of this Court as well as all standards of justice. How can it be concluded that the petitioners would have been found guilty if the jury had been made aware of the secret deals made between the Government and the admitted conspirators — Sumrall and Cash?

There can be no fairness in a trial when the benefactors of the Government generosity are described as innocent by-standers when in fact they are the engineers of the conspiracy. How can one even suggest the

presence of fairness when Sumrall and Cash are walking the streets, and three other persons far less involved, with two being simple employees, serving or facing prison time. This is like the fisherman keeping the small fish and throwing back the big fish.

As stated in the Petition, the Government took the two conspirators, the engineers of the crime; made deals with them; and was left with no one for the jury to convict except who ever might be there.

CONCLUSION

The memorandum of the Solicitor General actually supports the arguments presented in the Petition. Certiorari should be granted and the convictions should be reversed.

Respectfully Submitted,

FRASIER & FRASIER

BY: _____

James E. Frasier